

VOCATIONAL REHABILITATION RULES CLARIFIED

The new Rules and Regulations have generated a number of questions as to how to implement its provisions. This is the first of a series of Newslines designed to address these questions.

Application of the New Rehabilitation Fee Schedule

For workers injured on or after January 1, 1994, the new Fee Schedule specifically indicates that the maximum allowable expenditure for counseling and evaluation services cannot exceed \$4500.

For workers who are (a) injured prior to January 1, 1994 and (b) become medically eligible for vocational rehabilitation services on or after January 1, 1994, the "phased" approach in the new fee schedule is presumed reasonable. For example, for Phase One the amount presumed reasonable is the time spent on the initial evaluation at \$65 per hour (to a maximum of five hours) plus any appropriate work evaluation module, plus any "interphase services," up to a total for Phase One services of \$1,200. Additional fees may be payable if there are extraordinary circumstances, using Service Code 90. **The \$4500 limitation does not apply to this population.**

For workers injured and determined medically eligible prior to January 1, 1994, **the old fee schedule should be applied.** This will be clarified in our "clean-up" of all of the rules that will occur later in the year.

Vocational Rehabilitation Notices

Many claims administrators have expressed concerns regarding the Notice of Delay in Section 9813(a)(2). The main question that has been posed is whether a Notice of Potential Eligibility is required **prior to** advising the injured worker of any delay in the provision of rehabilitation benefits. To clarify, if the claims administrator has received a report indicating that the worker is medically

eligible for vocational rehabilitation services, a Notice of Potential Eligibility is required. If further information is required for the claims administrator to be in a position to offer vocational rehabilitation services, a Notice of Delay is required. Rather than sending two separate notices, the regulations allow the claims administrator to merge the notices.

In any other situation where the claims administrator must obtain further information in order to offer or deny rehabilitation services, a Notice of Delay is required.

There has also been some confusion over whether Section 9813(a)(3) operates to limit the requirement to send a denial of VR benefits to those instances where there has been a request for services or a notice of potential eligibility. It should be noted that Labor Code Section 4636(d) requires that the employer notify a worker of the treating physician's final opinion when initially determining eligibility if the worker has been disabled for at least 90 days. If the treating physician reports that the worker can return to work, a denial of VR benefits is required. The regulations will be amended to reflect this requirement.

Determination of Medical Eligibility/Job Descriptions

The new statute requires the claims administrator to jointly develop a job description to send to the treating physician, an act formerly performed by a Qualified Rehabilitation Representative. Questions have arisen about how to handle this requirement if the injured worker is not cooperative. The claims administrator remains responsible to determine medical eligibility with the treating physician under Labor Code Section 4636. If the injured worker unreasonably refuses to develop a joint description, the claims administrator must proceed to determine medical eligibility using the best available information.

Forms and Pamphlets

Copies of the new forms and the *"Help in Returning to Work -94"* pamphlet will be available by the end of March, 1994. They will be forwarded to major organizations for reproduction and distribution. Single copies will be available at the local Rehabilitation Unit offices.

"Form Instructions" to assist you in correctly processing the forms will be also be available at the local Rehabilitation Unit offices.

White copies of all forms are acceptable, however, the use of green paper for the Request for Dispute Resolution and blue paper for Rehabilitation Plans is encouraged to assist in identifying these particularly time sensitive documents. To insure that we timely process all requests, please make sure that the forms are used as the cover sheet to any information submitted to the Rehabilitation Unit.

The new RU-102 Vocational Rehabilitation Plan must be used for employees injured on or after January 1, 1994 and for injured workers determined medically eligible on or after January 1, 1994. All other plans must be written on the new form when signed after May 1, 1994.

Also effective May 1, 1994, the new RU-105 Notice of Termination is to be used for all injuries occurring after January 1, 1990. For injuries prior to January 1, 1990, the old rules are still in effect -- that is, the old RB 105 "Request for Conclusion" must be submitted.

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